

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

DAVID H.

Claimant,

vs.

EASTERN LOS ANGELES REGIONAL
CENTER,

Service Agency.

OAH No. 2012120680

OAH No. 2012120678

DECISION

This matter was heard before Glynda B. Gomez, Administrative Law Judge, Office of Administrative Hearings, State of California, on January 30, 2013, in Alhambra, California.

Gerard Torres, Supervisor, represented Eastern Los Angeles Regional Center (ELARC), the service agency.

Claimant Kevin H. (Claimant) was represented by his father (Father). Claimant's mother (Mother) was also present and was assisted by a certified Vietnamese language interpreter.

At the request of the parties, OAH Case numbers 2012120673, 2012120678, 2012120680 and 2012120786 were consolidated for hearing purposes only. Evidence was received, the record was closed, and the matter was submitted for decision on January 30, 2013.

ISSUES

1. Whether ELARC must place Claimant in the same facility with his two siblings and in the City of Alhambra when out-of-home respite is required.
2. Whether ELARC may reduce Claimant's in-home respite from 30 hours per month to 20 hours per month

FACTUAL FINDINGS

1. Claimant is a nine year old boy that has been made eligible for regional center services under the category of Autism. Claimant has severe behavior issues including tantrums, elopement and aggression. He needs assistance with toileting and requires constant supervision.

2. Claimant lives with his parents and three siblings. Two of his siblings are also regional center consumers with Autism diagnoses. Neither of his parents works outside of the home. Mother is a full-time care giver for the children. Father suffered a work-related back injury and is unable to work or care for the children by himself.

3. Claimant's Individual Program Plan (IPP) dated September 24, 2012 provides for up to 21 days per year of out of home respite and 30 hours per month of in home respite care. Respite care is provided by Claimant's uncle.

4. Claimant attends a public school full inclusion program and attends school Monday through Friday from 8:30 a.m. to 2:30 p.m.

In Home Respite

5. In October of 2012, Claimant requested an increase in respite hours. After a review of Claimant's file and purchase of service guidelines, ELARC denied the request for an increase in hours and proposed to reduce Claimant's respite hours from 30 hours to 20 hours. Claimant is one of four young children in a household with three regional center consumers and one disabled parent. Claimant has aggressive behavior, is resistant to control, is unable to focus and elopes from home. He also requires assistance with toileting, teeth brushing and bathing. His family is overwhelmed with his needs and the needs of his three siblings, two of whom are developmentally disabled with their own behavioral issues and serious medical issues.

6. The ELARC purchase of service (POS) guidelines provide that "In-home respite services" means "intermittent or regularly scheduled temporary non-medical care and supervision provided in the Individual's home. The individual must reside with a family member to be eligible for respite services. It also provides that the In-home respite services are intended to: (1) assist family members in maintaining the consumer at home, (2) provide appropriate care and supervision to ensure the individual's safety, (3) relieve family members from the constantly demanding responsibility of caring for the individual and (4) attend to the individual's basic self-help needs and other activities of daily living.

7. The ELARC POS guidelines and Welfare and Institutions Code Section

4686. 5 provide that a regional center shall not purchase more than 90 hours of In-home respite services in a quarter per consumer. An exemption may be granted if the intensity of the consumer's care and supervision needs are such that additional respite is necessary to maintain the individual in the family home or there is an extraordinary event that impacts the family member's ability to meet the care and supervision needs of the individual.

8. The ELARC POS Guidelines contain criteria for the determination of what level of In-home respite is assigned to a particular consumer. For 30 hours of respite, the "Level F" factors are examined. Specifically, the consumer's chronic or acute medical condition, chronic intense maladaptive behaviors which require 24-hour supervision, self-care needs, care giver condition and family stress factors including the presence of multiple consumers in the home are evaluated.

9. Claimant does not have acute medical needs. However, he has displayed chronic intense maladaptive behaviors such as tantrums, aggression and elopement which require 24 hours supervision. Additionally, he requires assistance with self-care such as toileting, bathing and brushing his teeth. Finally, and importantly, Claimant's parents are exhausted even with the current level of 30 hours of respite provided by ELARC before the proposed reduction. Claimant lives in a home with four young children, three of which have a diagnosis of Autism and one of which is medically fragile. Claimant's parents have both suffered health issues. Claimant's father has a spinal injury from a work related injury which is expected to result in permanent disablement and his Mother has suffered from a recent head injury.

Out of Home Respite

10. In 2010 and 2011, Claimant used In-home respite in lieu of out of home respite when Mother took a vacation to Vietnam for three weeks to see her family. At that time, Father and Claimant's uncle, his respite worker, cared for Claimant and his siblings in the family home while Mother was away. In 2012, Claimant again requested the same arrangement. However, ELARC's purchase of service policy had changed in response to changes in the Lanterman Act. Claimant's parents were advised by ELARC that "in-home respite in lieu of out-of-home respite" had been eliminated except in instances in which the regional center was unable to provide Out-of- home respite. In August of 2012, ELARC located a facility that would have accommodated Claimant and his two regional center consumer siblings. Claimant's Father did not approve of the facility and Mother cancelled her trip. In a decision after a fair hearing held on August 12, 2012, an administrative law judge determined that ELARC had met its obligations to Claimant by providing out-of- home respite and that ELARC was not required to provide "in-home-respite in lieu of out-of- home respite" because appropriate out of home accommodations were located by ELARC.

11. ELARC's purchase of service policy provides that "Out-of-home respite service" means "intermittent or regularly scheduled temporary care provided

outside the consumer's home by a vendored service provider.” Providers in this category include adult day care centers, child care centers, residential facilities, and intermediate care facilities. According to the purchase of service policy, out-of-home respite is appropriate when occasional family and/or consumer needs are more than the support of friends, natural and community supports can provide. Additionally, out of home respite may be used as a support option should family members have planned activities which preclude the participation of the consumer such as vacations, hospitalizations, or family emergencies.

12. Claimant now requests that ELARC be required to find an out-of- home respite provider that will accommodate him and his two disabled siblings within the City of Alhambra. Father wants to visit Claimant and his siblings while Mother is away and it is more convenient for him and less disruptive to the children, if all of the children are in the same location.

13. Claimant and his parents have been unable to provide ELARC with any proposed dates for use of out-of- home respite and were unable to provide dates for out of home respite use at the time of hearing.

14. ELARC supervisor Elizabeth Ornelas (Ornelas) credibly testified that it would artificially constrain ELARC's ability to locate an appropriate placement for Claimant if ELARC was geographically restricted to placing Claimant and his two siblings within the City of Alhambra and in the same facility. In August of 2012, ELARC was able to locate placements for all three children in the same facility within the ELARC catchment area, but Claimant's parents did not approve the placement. According to Ornelas, the more advance notice Claimant parents are able to provide to ELARC, the more likely their preferences can be honored. ELARC's primary concern is an appropriate placement for Claimant's needs, and secondarily placing him with his siblings. ELARC is not able to start the process of locating placement for Claimant until his parents provide ELARC with the dates that the service will be needed so that ELARC staff can make inquiries with its vendors about availability.

LEGAL CONCLUSIONS

1. The Lanterman Development Disabilities Services Act¹ sets forth a regional center's obligations and responsibilities to provide services to individuals with developmental disabilities. As the California Supreme Court explained in *Assocation for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388, the purpose of the Lanterman Act is twofold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community.

¹ Welfare and Institutions Code section 4500, et. seq.

2. In enacting the Lanterman Act, the Legislature accepted responsibility to provide for the needs of developmentally disabled individuals, and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (Welf. & Inst. Code § 4501.) Appropriate services and supports include in-home and out-of-home respite services. (Welf. & Inst. Code § 4512, subd. (b).) Thus, regional centers are responsible for developing and implementing IPPs, for taking into account a consumer's needs and preferences, and for ensuring that services are cost-effective. (Welf. & Inst. Code §§ 4646, 4646.5, 4647, and 4648.)

3. The Lanterman Act gives regional centers, such as ELARC, a critical role in the coordination and delivery of services and supports for person with disabilities. (Welf. & Inst. Code § 4620 et. seq.) It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources. (Welf. & Inst. Code § 4646.)

4. Effective, July 1, 2009, a regional center may only purchase respite services when the care and supervision needs of a consumer exceed that of an individual of the same age without developmental disabilities. (Welf. & Inst. Code § 4686.5, subd. (a)(1)) A regional center shall not purchase more than 21 days of out-of-home respite services in a fiscal year nor more than 90 hours of in-home respite services in a quarter for a consumer. (Welf. & Inst. Code § 4686.5, subd. (a)(2). A regional center may grant an exemption from these requirements, if it is demonstrated that the intensity of the consumer's care and supervision needs are such that additional respite is necessary to maintain the consumer in the family home, or there is an extraordinary event that impacts the family member's ability to meet the care and supervision needs of the consumer. (Welf. & Inst. Code § 4686.5, subd. (a)(3).)

Disposition

5. Here, Claimant's family is exhausted from his care and that of his disabled siblings. His needs are intense and his parents are both suffering from medical ailments. At this time, a reduction of In-Home respite hours to a level below 30 hours per month is not supported by the ELARC POS policy and jeopardizes his family's ability to care for him in their home and is not appropriate. (Factual Findings 1-9 and Legal Conclusions 1-4).

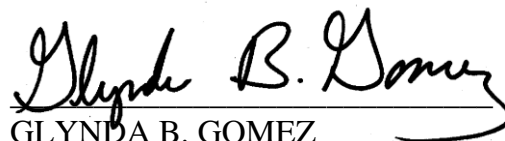
6. Claimant has not provided ELARC with any proposed dates for use of out-of- home respite. While a request to place Claimant and his two siblings together in the City of Alhambra may be difficult to accommodate, ELARC is willing to explore such a placement when Claimant's family has firm plans and can provide dates that the service will be needed. Claimant's argument that ELARC should be required to place Claimant and his two siblings together in a placement within the City of Alhambra is not convincing and is not required by the Lanterman Act or the ELARC purchase of service policy. ELARC's first concern in placement must always be for an appropriate placement to meet Claimant's needs. ELARC should continue its efforts to honor the preferences of Claimant's family, but location of an appropriate out-of- home placement for Claimant during out-of- home respite services does not require that such preferences be met. (Factual Findings 1-14 and Legal Conclusions 1-4.)

ORDER

1. Claimant's appeal of the Eastern Los Angeles Regional Center's proposed reduction in In-home respite hours is granted. The Eastern Los Angeles Regional Center may not reduce Claimant's In-home respite to a level below thirty hours per month.

2. Claimant's appeal is denied to the extent it sought to require the Eastern Los Angeles Regional Center to place Claimant and his siblings together in an out-of- home facility within the City of Alhambra.

DATED: February 14, 2013


GLYNDA B. GOMEZ
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of the decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)